**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 85 OF 1992.**

Smt. Yashodabai Ganpatrao Dhamale, age about 54 years, occupation House--hold residing at 477B, Mahatma Phule Peth, Pune - 42. .. Petitioner

Versus

Santosh Lalchand Kachhave, age about 26 years, occupation service residing at 477B, Mahatma Phule Peth, Pune - 42. .. Respondent

Mr. V.V. Savaji i//b Prafulla Shah for the appellant.

Mr. Jagdish Shetty i/b Mrs. Suhasini Mutalik for the respondent.

**CORAM: ANOOP V. MOHTA, J.**

**DATED: 30TH JUNE, 2005**

**ORAL JUDGMENT. :**

1. The petitioner-tenant has invoked Article 227 of the Constitution of India and, thereby, challenged the concurrent finding of facts regarding the non-payment of the rent to the respondent-landlord.

2. Respondent-landlord is the owner of House No.447B, situated at Mahatma Phule Peth, Pune by virtue of a Will dated 9th May 1979. The petitioner has been

in occupation of the suit premises, but not paid the rent regularly. Therefore, by Notice dated 14th January, 1986, a demand was made for the arrears of rent from the year 1979 till the date of the Notice. The said Notice was replied. The Suit for eviction, based upon the said Notice was filed on 3rd March, 1986. Admittedly, the petitioner-tenant has not deposited and/or shown her bonafide and/or intention to deposit the rent immediately within one month. No steps were taken, as contemplated under Section 13 of The Bombay Rents, Hotel & Lodging House Rates (Control) Act, 1947 (for short "The Bombay Rent Act") within one month from the receipt of the said Notice. Admittedly, Misc. Application was filed after one month before the Court for adjudication of the fair rent or standard rent. The same was decided.

3. After considering the material placed on the record, including the respective evidence of the parties, the learned trial Judge, by judgment and order dated 25th November, 1988, held that the petitioner-tenant is a defaulter and passed the decree for possession on the ground of default only. The other grounds raised by the petitioner-tenant were rejected. The petitioner, therefore, preferred an Appeal. The Appellate Court, by its order dated 13th September,

1991, confirmed the order of the trial Court by holding that the petitioner-tenant is a defaulter and, therefore, respondent-landlord is entitled to the possession of the suit premises.

4. Heard the learned counsel for the parties. Shri V.V. Savaji, the learned counsel appearing for the petitioner basically relied on **Chokhaji Zamraji Urkude Vs. Shammrao Sitaram Nagolkar**, 1997 I, L.J., 200 and contended that he had no notice of atornement and even based on that notice, the present suit, as admittedly not filed after six months from the Notice dated 14/1/1986, was not maintainable. He further contended that the petitioner-tenant was not in arrears of rent for want of knowledge of ownership of the premises in question, when admittedly the property was transferred and was owned by the present respondent only from the year 1979. The premises in question, in fact, were never owned by the respondent as the initial tenancy was of only a plot and not of the premises. Therefore, the concurrent findings, as arrived at by the Courts below, need to be interfered with.

5. The learned counsel appearing for the respondent, however, has supported the reasoning given by the Courts below and relied on **Ibrahim Abdulrahim**

**Shaikh (dead) by LRs Vs. Krishnamorari Sripatlal Agarwal (dead) by LRs,** (1995) 1, S.C.C., 265 and **Arjun Khiamal Makhijani Vs. Jamnadas C. Tuliani & Ors.**, (1989) 4, S.C.C., 612.

6. After going through the record and after considering the rival contentions, as raised by the parties, I am also of the view that the respondent-landlord is entitled for possession of the property in question in view of the admitted default in depositing the arrears of rent by the petitioner-tenant.

7. Admittedly, no rent was deposited or any dispute was raised within one month from the receipt of the demand notice dated 14/1/1986, Even though there is a submission made that it was replied. There is nothing on the record to suggest as to on which date it was replied and what were the contents of the said reply. The suit was filed on 3rd March, 1986. Admittedly, the Misc. Application was filed without disputing the rent or its quantum, within one month of the receipt of demand notice. There is nothing on the record to show and/or suggest and/or borne out, to reflect the bonafide intention of the tenant to deposit the rent as claimed and/or demanded.

8. The issue about atornement notice, in the facts and circumstances of the case, in no way supports the defence of the petitioner-tenant. Even after demand notice dated 14/1/1986, no such bonafide intention to deposit the rent was expressed specially when the said notice was replied, but no rent was deposited. On the contrary, he challenged the ownership of the respondent-landlord. The petitioner-tenant had knowledge about the change ownership of the premises in question. However, without even going into that controversy, it is very clear that the judgment as relied **Chokhaji Urkude** (supra) is totally distinguishable on facts itself. In that case also, there was no notice of atornement, still, it is observed that a heavy burden lies on the subsequent landlord to prove that he had given an idea that he had become the owner and, therefore, the tenant was liable to pay the rent. In the present case, as rightly pointed out by the counsel appearing for the respondent-landlord, in the cross-examination of the petitioner himself, he has deposed as under:

> "Gitabai expired before about 10 years. It is not true that after death I did not pay the rent. I paid rent to the plaintiff. Plff. did not pass any rent receipts to me. Gitabai was also not

> passing regular rent receipts. It is not true that I did not at all pay rent to plff. after the death of Gitabai."
>
> "It is not true that after the death of Gitabai I did not send M.O. to plff. I have produced M.O. coupons threfor. On 5-7-84 I had sent Rs.15."

This itself shows that the defence, as raised and/or sought to be contended, itself was not based on any material and in fact, is contrary to their own evidence. Therefore, this ground also looses its strength.

8. In view of the undisputed position of facts, as recorded above, and as reflected and accepted by the Courts below, there is no option, but to confirm the decree for possession.

9. The Apex Court while considering the relevant provisions of the Bombay Rent Act in **Ibrahim Shaikh (supra) observed as under:**

> "The tenant is obligated to pay the rent to the landlord every month unless the landlord refuses to to receive it. In the latter event recourse can be had to deposit the rent."
>
> "Therefore, by necessary construction of Section 11 and 12, what this Court appears to have intended was that the tenant

> should dispute the standard rent or permitted increases within one month from the date of the receipt of the notice and then file the application under Section 11(3). It would not appear to have been meant that the application under Section 11(3) should also be filed within one month from the date of the receipt of the notice. But expeditious action is called for to prove the bona fides of the tenant disputing the right of the landlord in the claim of standard rent or permitted increases."

In another Judgment **[Arjun]**, the Apex Court, again based on the Bombay Rent Act observed thus:

> "Sub-section (3)(a) of Section 12 categorically provided that where the rent was payable by the month and there was no dispute regarding the amount of standard rent or permitted increases, if such rent or increases were in arrears for a period of six months or more and the tenant neglected to make payment thereof until the expiration of the period of one month after notice referred to in sub-section (2), the court shall pass a decree for eviction in any such suit for recovery of possession."

There cannot be any answer to the above observations. In view of the above settled principle and in the facts and circumstances of the case, as there is no illegality or perversity in the reasoning given and there is no case to interfere with the concurrent finding of facts.

9. In view of the above reasons, the present Petition is dismissed. Rule is discharged. Interim stay is vacated. No order as to costs. However, six months' time is granted to the tenant to vacate the premises, subject to filing of a usual undertaking of the petitioner and his members who are also occupying the said premises, within a period of 4 weeks from today, failing which, the respondent-landlord is at liberty to proceed in accordance with law.

**[ANOOP V. MOHTA, J.]**

[srpasha@hc]